

Supreme Court, U. S.

FILED

NOV 15 1978

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

October Term, 1978

No. **78-804**

DOMINIC LaROCCO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

F. JAMES VOSS

1034 Logan Street
Denver, Colorado 80203

Attorney for Petitioner

TABLE OF CONTENTS

	Pages
Petition for a Writ of Certiorari	1
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statement	3
Reasons for Granting Writ	3
Conclusion	4
Appendix A	App. 1
Appendix B	App. 4

AUTHORITIES

Title 18, United States Code, Section 1962	3
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____—o—____
No. _____

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DOMINIC LaROCCO,
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vs.

UNITED STATES OF AMERICA,
Respondent.

____—o—____
**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

____—o—____
DOMINIC LaROCCO, your Petitioner, respectfully
prays that a Writ Of Certiorari be issued to review the
Judgment of the United States Court of Appeals for the
Tenth Circuit entered on September 8, 1978.

____—o—____

OPINIONS BELOW

This cause was decided by a panel of the United States Court of Appeals for the Tenth Circuit on September 8, 1978. The portion of the opinion relating to the Petitioner is reproduced as Appendix A hereto.

On October 17, 1978, the Court of Appeals denied the Petitioner's Petition for Rehearing. This Order is reproduced as Appendix B hereto.

JURISDICTION

The Judgment of the United States Court of Appeals was entered on September 8, 1978. A timely Petition For Rehearing was denied on October 17, 1978.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED

Whether or not the verdict of guilty as to Count III of the Indictment may be permitted to stand when the Petitioner was found *not* guilty as to Count II.

STATEMENT

Petitioner was indicted along with eleven other Co-Defendants in what was basically an illegal gambling business case. He was charged under Count II of the Indictment (the illegal gambling business count) and, consequently, Count III (charging a pattern of racketeering activity under Title 18, United States Code, Section 1962).

Following a very lengthy and complex trial, in which the majority of the Co-Defendants were found guilty as to all Counts against them, Petitioner was found *not* guilty as to Count II (the professional gambling business charge), but was found guilty as to Count III (the racketeering activity Count).

REASONS FOR GRANTING THE WRIT

The question presented appears to be one of first impression. Neither counsel for Petitioner nor the government attorneys have been able to find or cite any cases covering this particular situation.

It seems quite obvious that the statutes involved in Count III of the Indictment were enacted to deal with organized crime activities and their influences on interstate commerce. In this connection, Petitioner was found *not* guilty of being any part of an organized gambling business (Count II of the Indictment), and there was no attempt by the government to connect Petitioner with any other type of organized criminal or racketeering activity.

In addition, there was no proof, or evidence even offered, that Petitioner's mere wagering had any effect whatsoever on any other business involved in interstate commerce. To the contrary, all testimony presented showed that Petitioner lost money on his personal wagering activities during the period involved in this case.

CONCLUSION

For these reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

F. JAMES VOSS

1034 Logan Street
Denver, Colorado 80203

Attorney for Petitioner

App. 1

APPENDIX A

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Nos. 76-2179, 76-2180, 76-2181, 76-2182,
76-2183, 76-2184, 76-2185, 77-1009

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

CLARENCE M. SMALDONE, CAROL JEAN REEB,
ANITA D. ROWLAND, LARRY SCOTT OWENS,
EDNA FRANCES DE SANTIS, JOHN HENRY
ROUTA, DOMINIC LA ROCCO, and SAMUEL FO-
DERARO,

Defendants-Appellants.

Appeal from the United States District Court
For the District of Colorado

(D. C. No. 76-CR-169)

(Filed September 8, 1978)

Cathlin Donnell, Special Assistant United States Attorney
(Joseph F. Dolan, United States Attorney, on the brief),
for Plaintiff-Appellee.

Leonard E. Davies (Davies and Saint-Veltri, on the brief),
for Clarence Smaldone, Carol Jean Reeb, Anita D. Row-
land, Larry Scott Owens, and Edna Frances De Santis,
Defendants-Appellants.

Victor F. Crepeau, for John Henry Routa, Defendant-
Appellant.

F. James Voss, for Dominic La Rocco, Defendant-Appel-
lant.

App. 2

Donald P. Hostetter, for Samuel Foderaro, Defendant-Appellant.

Before McWILLIAMS, BREITENSTEIN and LOGAN,
Circuit Judges.

1955

... Appellant La Rocco was acquitted under count 2, but convicted under count 3. On appeal, counsel in his brief argues that these verdicts were inconsistent and hence the guilty verdict under count 3 cannot be permitted to stand. Counsel concedes that he is unable to find any authority supporting such argument. Count 2 charged La Rocco with conducting an illegal gambling operation in which the other named defendants were involved. Count 3 charged La Rocco alone with using the Satan Lounge in conducting a gambling business through a pattern of racketeering and, in the alternative, with using his lounge in the collection of gambling debts. The jury was instructed that under count 3 it was not necessary for the Government to establish that the Satan Lounge was used *both* in the conduct of the gambling operation *and* the collection of gambling debts. By its verdict, the jury has, in effect, determined that La Rocco did not use his lounge to conduct a gambling business through a pattern of racketeering, but that he did use the lounge in connection with the collection of gambling debts. In this latter regard, there was evidence that gambling debts were paid off to La Rocco at Satan's Lounge. The verdicts were not inconsistent.

The appellants raise other matters as grounds for reversal, such as the sufficiency of the indictment, improper instruction on "aiding and abetting," inadmissible evidence, and the like. We have examined these various other matters and find each to be without merit. None warrant any comment.

App. 3

As indicated, this was a protracted trial. There were numerous charges, numerous defendants and numerous lawyers. It was a difficult case to be tried under "one roof." United States v. Heath, — F.2d — (10th Cir. 1978). Nonetheless, the record is remarkably free of even harmless error, let alone prejudicial error. The several defendants have received a fair trial, and the judgments should be, and hereby are,

AFFIRMED.

App. 4

APPENDIX B

SEPTEMBER TERM—October 17, 1978

Before The Honorable Robert H. McWilliams, The Honorable Jean S. Breitenstein, and The Honorable James K. Logan, Circuit Judges

No. 76-2185

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

DOMINIC LA ROCCO,

Defendant-Appellant.

This matter comes on for consideration of petition for rehearing filed by the appellant in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

/s/ Howard K. Phillips, Clerk

A true copy

SEAL

Teste

Howard K. Phillips, Clerk, U. S. Court of Appeals,
Tenth Circuit

By /s/ Barbara M. Titcombe, Deputy Clerk

